SUPREME COURT, U. S.

SEP 22 1969

JOHN F. DAVIS, CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1969

No. 625

REUBEN CARLTON, H. C. WILLIAMSON and WILLIAM HAIR,
Appellants,

vs.

DOYLE CONNER, AS COMMISSIONER OF AGRICULTURE, STATE OF FLORIDA,
Appellee.

ON APPEAL FROM THE SUPREME COURT OF THE STATE OF FLORIDA

JURISDICTIONAL STATEMENT OF APPELLANTS

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JURISDICTIONAL STATEMENT

Pursuant to Rule 15 of the Rules of this Court, the following jurisdictional statement is submitted.

This appeal was instituted by notice of appeal filed in the Florida Supreme Court on August 13, 1969. The ap-

peal is directed to the decision of that Court in the case of *Conner, as Commissioner of Agriculture of the State of Florida*, v. *Carlton, et al.*, ___ So.2d ___ (Fla. 1969), Case No. 37,932, Opinion filed May 14, 1969, and decision rendered on June 27, 1969.

The nature of the proceeding below was a consolidated suit for mandatory injunction and counterclaims plus independent suits for declaratory decree. Each suit sought to test the validity of the cattle brucellosis disease eradication program as carried out by the appellee, Commissioner of Agriculture, against the appellants who were cattle owners in the State of Florida. The action was brought pursuant to Chapter 585, Florida Statutes. The decision sought to be reviewed is the Opinion of the Florida Supreme Court filed in this cause on May 14, 1969, and rendered on June 27, 1969. The notice of appeal directed to this Opinion was filed in the Florida Supreme Court on August 13, 1969.

Jurisdiction of this Court is conferred by 28 U.S.C. §1257(2).

The cases believed to sustain the jurisdiction of this Court are as follows:

Yakus v. *U. S.*, 1944, 321 U.S. 414, 64 S.Ct. 660, 88 L.Ed. 834.

Wolf v. *Colorado*, 338 U.S. 25, 69 S.Ct. 1359, 93 L.Ed. 1782. Ovrld. on other grounds, *Mapp* v. *Ohio*, 367 U.S. 643, 81 S.Ct. 1684, 6 L.Ed.2d 1081, reh. den., 368 U.S. 871, 82 S.Ct. 23, 7 L.Ed.2d 72.

Dartmouth College v. *Woodward*, 4 Wheat. (U.S.) 518, 4 L.Ed. 629.

Walker v. *City of Hutchinson*, 77 S.Ct. 200, 352 U.S. 112, 1 L.Ed.2d 178 (1956).

Gramlich v. *Joint County Park Bd.*, 191 F.2d 792 (C.A. Ind. 1951).

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West v. *Chesapeake & Potomac Tel. Co. of Baltimore City*, 55 S.Ct. 894, 294 U.S. 662, 79 L.Ed. 164, reh. den., 56 S.Ct. 82, 296 U.S. 661, 80 L.Ed. 471.

Bedenbaugh v. *Adams*, 88 So.2d 765 (Fla. 1956).

Corneal v. *State Plant Board*, 95 So.2d 1 (Fla. 1957).

State Plant Board v. *Smith*, 110 So.2d 401 (Fla. 1959).

Appellants immediately point out that these cases are not factually similar to the present case. This is because the Federal Courts of the United States have not yet passed upon the validity of the brucellosis eradication program.

The validity of the following Florida Statutes and regulations is in question on this appeal. These statutes and regulations form a crucial part of the appellee's brucellosis eradication program as enforced under Chapter 585, Florida Statutes.

"585.08 General powers of the department; rules and regulations.—The division of animal industry is authorized through the commissioner to:

"(1) Establish, maintain and enforce quarantine areas within the state, or the entire state, and restrict, regulate or prohibit the movement or transportation of domestic animals and all other animals or cattle found, determined or suspected by the commissioner, or the technical committee under its emergency powers, to be carriers of any contagious, infectious or communicable disease or cattle fever ticks, into, from and within such areas, when necessary for tick eradication, or for the carrying out of any of the purposes of this chapter, and for the prevention or the control of the spread or dissemination of cattle fever ticks or

any contagious, infectious, or communicable disease among domestic animals and cattle.

"(2) Prescribe quarantine areas, their locations and boundaries, for the purpose of eradicating the cattle fever tick (Margaropus Annulatus) and controlling and preventing the propagation and spread of the same, and to restrict, regulate and prohibit the movement or transportation of domestic animals or cattle into, within, or out of such quarantine areas, when deemed necessary for the prevention or the control of the spread or dissemination of the cattle fever tick (Margaropus Annulatus).

"(3) Make, promulgate, amend, repeal and enforce rules and regulations:

"(a) For the carrying out of the provisions, purposes and requirements of this chapter;

"(b) Governing the introduction of domestic animals into or within the state, which rules and regulations, when deemed necessary by the commissioner, or the technical committee under its emergency powers, may require that all domestic animals moved into the state be covered by an official health certificate and requisite test chart approved by the livestock sanitary officer of the state or county of origin;

"(c) Governing the disposal or destruction of carcasses of domestic and other animals, which are condemned or die from or while afflicted with any contagious, infectious, or communicable disease, in such manner as to prevent the spread or continuance of such contagion or infection;

"(4) Condemn and destroy any domestic animals, or other animals affected with any contagious, infectious, or communicable disease, or which have been exposed to or are suspected of being liable to spread any contagious, infectious, or communicable disease.

"(5) Condemn and destroy any barn, yard, shed, corral, or pen which, in the opinion of the commissioner, or the technical committee under its emergency powers, is liable to convey the said infection or contagion.

"585.09 Procedure for condemnation of domestic animals and property by department.—Condemnation and destruction of domestic animals, barns, yards, sheds, corrals and pens, as provided in §585.08 shall take place only after a fair appraisal of the value of the property, which value shall be determined by the commissioner and the owner; provided, however, should the commissioner and the owner be unable to agree on such value, the value shall then be determined by three disinterested appraisers, one to be appointed by the commissioner, one by the owner of the property, and the third to be selected by these two. The appraised price, subject to the provisions of §585.10, shall be paid by the department as other expenses are paid. If the owners or person in charge of such domestic animal, barn, yard, shed, corral, or pen fails or refuses to name his or her appraiser within five days after requested by the commissioner to do so, or refuses to permit the same to be condemned and destroyed, the commissioner may make an order to the sheriff of the county wherein the property lies, directing him to destroy such domestic, animal, barn, yard, shed, corral or pen in the manner to be prescribed by such order, which order shall be executed by said sheriff forthwith. Upon the destruction of the said property by the said sheriff, the department shall have the right to recover, from the owner of the property destroyed, all costs and expenses incurred by it in connection therewith.

"585.10 Condemned and destroyed animals: limitation on payment to owner.—The department may indemnify and reimburse the owners of all animals condemned and destroyed by order of the commissioner in cases where such animals have reacted to

the tuberculin test or the agglutination blood test for brucellosis (Bang's disease); provided, however, that such indemnity or reimbursement shall not exceed the sum of twelve dollars and fifty cents for any one animal."

"7C-6.02 Plan A: test and slaughter, calf vaccination optional, indemnity.—

"(1) This plan is designed for eradication of brucellosis by the test and slaughter method and the practice of a sound herd management and sanitation program. It is strongly recommended that calf vaccination be a part of the herd management program. All cattle in the herd with the exception of steers, calves under 6 months of age and official brucellosis vaccinates under 20 months of age for dairy breeds and 24 months of age for beef breeds must be tested as deemed necessary by the cooperating agencies. All reactors to each test shall be immediately tagged, branded, appraised and consigned for immediate slaughter. Immediately following the removal of reactors for slaughter, premises will be cleaned and disinfected with an approved disinfectant. Herds in which infection is disclosed shall be quarantined until all eligible animals in the herd have passed one negative test not less than 30 days from the date of the last test in which infection was disclosed.[1] When only suspects are disclosed, such animals shall be isolated and retested at 30-60 day intervals until their status is determined. After the herd has reached a negative status, it shall be blood tested annually unless the herd is being satisfactorily screened by the brucellosis ring test or the market cattle testing program.

"(2) Cattle owners who elect plan A are required to:

"(a) Present the entire herd for initial test and permanent identification.

"(b) Present all calves as they reach 3 through 8 months of age for vaccination and permanent identification when calf vaccination is elected.

"(c) Practice sound herd management and sanitation.

"(d) Isolate reactors as soon as tagged and branded by veterinarian and remove from premises under authority of official permit for slaughter only and within 15 days of date of tagging and branding in order to be eligible for indemnity.

"(e) Clean and disinfect premises following removal of reactors.

"(f) Keep supervising veterinarian informed as to status of all herd additions.

"(3) Make herd additions only as follows:

"(a) Cattle from certified brucellosis free herds without test provided they were a part of the herd at the time of the last certifying test.

"(b) Cattle from non-quarantined herds negative to test within 30 days of movement, isolated on premises 60 days, then negative to retest.

"(c) Official calf vaccinates under 20 months of age for dairy breeds and 24 months of age for beef breeds without test; other official vaccinates must be negative.

"(4) A herd may advance to a certified brucellosis free status when it has passed the required number of consecutive negative tests and upon proper application for such status by the owner.

"7C-6.06 Identification of tested cattle.—

"(1) Each grade animal tested shall be identified by a numbered metal ear tag firmly attached to the right ear at the time the blood sample is drawn

for test, unless the animal is already identified by such tag or permanent tattoo or brand. Each ear tag number shall be accurately recorded on the test records which accompany the blood samples to the laboratory.

"(2) Registered purebreed cattle may be ear-tagged for identification, or if the identification can be satisfactorily maintained by use of ear tattoo or brand letters or numbers, such identification may be used, provided the registry name and number of such purebred is accurately recorded on the reports which accompany the blood samples to the laboratory."

The following questions are presented by this appeal:

1. Whether the brucellosis program as established by Florida Statutes, Chapter 585, and as applied herein is unconstitutional as violating the equal protection clause of the Fourteenth Amendment of the United States Constitution.

2. Whether the brucellosis program as established by Florida Statutes, Chapter 585, and as applied herein is unconstitutional as violating the due process clause of the United States Constitution.

3. Whether the brucellosis program as established by law and as enforced herein constitutes a taking of private property without just compensation and without due process in violation of the Fourteenth Amendment of the United States Constitution.

4. Whether the brucellosis program as established by law and as applied herein constitutes unlawful and unconstitutional discrimination between and among citizens of the State of Florida.

5. Whether the brucellosis program as aforesaid is unconstitutional as an unreasonable and arbitrary scheme not calculated to achieve the stated Legislative purpose of eradicating the disease.

6. Whether the brucellosis program as aforesaid constitutes an unlawful use of the police power of the

State in violation of the constitutional protections of the Federal Constitution contained in the Fourteenth Amendment.

7. Whether the brucellosis program as aforesaid is unconstitutional as violating the equal protection clause of the Constitution of the United States in fostering discrimination.

8. Whether the appellants herein shall be required to submit their cattle to the test and slaughter program herein and to suffer the loss of said property without due process of law, other administrative safeguards or just compensation.

9. Whether the brucellosis program as aforesaid is an unconstitutional use of the State police power as an attempt to obtain a mere administrative designation of Martin County as a "modified certified brucellosis area" as established by Federal administrative procedure.

10. Whether the brucellosis program as aforesaid has been illegally invoked and whether the tests used therein are so unreliable and ineffective so as to render the entire program incomplete and without meaningful effect.

11. Whether the statutes and regulations under which this program is attempted are an unlawful enlargement of the statutory authority granted to the Division of Animal Industry by virtue of Chapter 585, Florida Statutes.

12. Whether a mandatory injunction should issue to require compliance with appellee's program or whether appellee should be enjoined from enforcing said program.

This is an appeal from an Opinion of the Florida Supreme Court rendered June 27, 1969. This Opinion reversed a final decree entered by the Circuit Court in and for Martin County, Florida, entered on September 10, 1968.

The one judgment entered by the Trial Court resulted from the trial of five consolidated civil actions, all relating to a brucellosis eradication program being conducted in beef cattle in Florida by the appellee, Doyle Conner, as Commissioner of Agriculture.

On February 29, 1968, the appellee, as Commissioner of Agriculture, filed suits praying for a mandatory injunction to require appellants to gather their beef cattle and present them for agglutination blood testing for brucellosis under a state-federal co-operative administrative program for the purpose of qualifying and designating Martin County, Florida as a "certified, modified brucellosis area". The defendants in these suits, appellants herein, filed motions to dismiss directed to the complaint for injunction. Paragraph 6 and sub-paragraphs (a) through (k) raised affirmative defenses to the effect that the statutes under which the suit was brought were contrary to the Constitution of Florida and the Constitution of the United States in that they deprived the defendants of their property without due process of law.

Eventually, on April 9, 1968, identical answers and counterclaims were filed by the defendants raising affirmative defenses and praying for a judicial determination of the constitutionality of the acts proposed by the defendant under Chapter 585, Florida Statutes. Again, the answers and affirmative defenses specifically asserted the statutes to be unconstitutional. Appellants also filed counterclaims specifically praying that the statutes be found unconstitutional.

After these suits had been filed, the Commissioner of Agriculture took the position that he had the power to enter the premises of the defendants without permission and involuntarily test and destroy their cattle without the judicial determination requested in the suits for manda-

tory injunction. Thus, three cattlemen, appellants herein, each filed a declaratory decree action against the Commissioner of Agriculture to judicially determine his legal rights in this procedure. These complaints in Cases Nos. 717, 718 and 719 sought a judicial determination as to the validity of the order whereby the Commissioner of Agriculture intended to test and slaughter the cattle. It was specifically asserted that the taking of these cattle would be in violation of the Federal Constitution in that property would be taken without due process of law.

All five cases were consolidated and tried by the Circuit Court without a jury commencing on August 26, 1968. This trial indicated that brucellosis is a cattle disease commonly known as Bang's disease. Its primary symptom in cattle is abortion. Cattle and many other animals are infected with brucellosis and are carriers. Swine, goats, dogs, rats and most warm-blooded animals in the State of Florida are carriers. The disease is not fatal in cattle and after an animal contracts brucellosis it often recovers and has a natural immunity to the disease as indicated by antibodies in the animals. The tests used by appellee to determine whether an animal is a "reactor" do not test for the actual disease. These tests detect only the presence of antibodies in the animal. Thus, a cow may not be diseased at all if it reacts to the test. The cow may have antibodies from natural immunity or from a vaccination against the disease. Vaccination is also a part of the brucellosis eradication program, on both the State and Federal level.

The brucellosis eradication program was instituted by the Federal Government in 1934 as a part of the Agricultural Adjustment Act to reduce extensive cattle population. In 1954, after the initial need terminated, the program was continued by changing it to one of eradica-

tion. It is now administered by federal and state bureaucracies of staggering proportions. Expenditures approximate 660 million dollars per year. This federal program has as its goal to have the entire United States administratively declared as a "modified, certified brucellosis area". The Florida Department of Agriculture cooperates in this federal program on an extensive basis. In fact, the federal program was shown to have been completed in 99 per cent of all counties in the United States.

The program for the eradication of brucellosis as carried out by the Commissioner of Agriculture is one of test and slaughter. Cattle are tested by one of four agglutination tests. If an animal reacts he is designated as a "reactor" and must be branded and sent to slaughter within 15 days. It was admitted by all of the up-to-date testimony from the various experts who testified at the trial that a "reactor" was not necessarily diseased. If a reactor is found, the regulations of the Department of Agriculture provide that a retest cannot be obtained unless there was confusion as to the validity of the original blood samples. Under Florida Statute §585.09 cattle cannot be condemned without first being appraised for their just value which is to be paid to the cattle owner. This appraisal provision is then rendered meaningless by Florida Statute §585.10, which limits indemnity to $12.50 per animal. The chief veterinarian for the State of Florida indicated that this was an inadequate sum to be paid. He stated it was adequate when the law was passed 30 years ago but prices have gone up.

It should be noted that brucellosis is also known as undulant fever in human beings. Human beings do not contract undulant fever from meat or milk when it is cooked or pasteurized. Thus, brucellosis beef and milk from brucellosis infected cattle are sold on the market without difference or distinction.

Substantial evidence was produced showing that this program resulted in extreme financial deprivation as to owners of cattle. The indemnity paid is not sufficient. The owner must bear the expense of rounding up his cattle and producing them for testing. Further, under a graft system employed in the application of the program, discrimination in favor of large ranchers occurs. Under this graft system, if an owner has 50 cows he must test all 50 cows. If the owner has 800 cattle, he is required to test only 149. Similarly, an owner with 10,000 cattle must test only 149 animals. Thus, the small cattle owner must test all cattle whereas the large cattle owner must test only 149 animals. Further, discrimination occurs in regard to limitations on indemnity. Under the program, the Commissioner of Agriculture is empowered to destroy barns, yards, sheds, corrals and pens which are liable to convey infection. If a barn or any other structure is destroyed, full indemnity must be paid but if a cow is destroyed only $12.50 per animal need be paid.

After a complete trial upon all issues, the Trial Court made certain findings of fact. These findings of fact were based on extensive expert testimony given by the foremost experts in the world, from the Federal Government and the Florida Department of Agriculture, and independent sources on brucellosis and this program throughout the entire United States. The Trial Court found as follows:

1. That brucellosis had existed in cattle in Florida and Martin County for a number of years.

2. That the incidence of the disease had not appreciably increased for some years and was not increasing at the time of the trial.

3. That there was no threatened or actual epidemic or emergency in the cattle industry due to the disease.

4. That during the last 10 to 15 years, the control of brucellosis in cattle was being accomplished quite well through a vaccination program.

5. That a significant number of healthy cattle are shown by the tests to be diseased and as such are sent to slaughter as diseased cattle.

6. That even infected cattle with brucellosis have a productive and valuable life in excess of the slaughter or carcass value for which compensation is paid.

Based on the above findings of fact the Circuit Court found that the Commissioner of Agriculture's suits for mandatory injunction should be dismissed.

The Court found that Florida Statutes §585.09 and §585.10, along with regulation 7C-6.02 were unconstitutional as a deprivation of property without due process of law. The Trial Court's final decree specifically reiterated the position of the cattle owners that the program of the Commissioner of Agriculture constituted a deprivation of property without due process of law in contravention of the Federal Constitution.

Subsequent to the entry of the final decree by the Trial Court, the Commissioner of Agriculture appealed to the Florida Supreme Court on a direct appeal warranted by the finding of unconstitutionality by the Trial Court. The main point on appeal stated in the brief filed by the Commissioner of Agriculture was whether there had been a denial of due process in the deprivation of the property of the cattle owners by the brucellosis program. The Florida Supreme Court answered this question in the negative and reversed the Trial Court. The Florida Supreme Court disregarded all of the up-to-date and current technical scientific evidence presented by both sides at the trial. The Florida Supreme Court disregarded all of this evidence

and instead merely relied upon a textbook which had never been introduced into evidence and which was completely out of date. The evidence presented to the Trial Court was extremely technical and scientific in nature. The Florida Supreme Court was not authorized to disregard this evidence and to rely instead on a single textbook.

It is appellants' position that this case presents substantial federal questions warranting an assumption of jurisdiction by this Court. It is unquestionably clear that the private property of appellants is subject to summary destruction by the Commissioner of Agriculture in an attempt to impress an administrative program upon all cattle owners in the State of Florida. As the Trial Court specifically found, there was no epidemic or emergency. There is no question that a state, under its police power, may summarily destroy diseased animals which do not have any useful life and value without paying the owner any compensation. This is not the situation here because the Trial Court specifically found on unrebutted testimony that a significant number of healthy animals were condemned as reactors despite the fact that they were not infected with the disease. The Trial Court further found that even animals that were infected with the disease had a useful life and value in excess of the $12.50 limitation placed on indemnification by the statute. Thus, the cattle owners have been deprived of both substantive and procedural due process.

Substantive due process is lacking because no compensation is paid for the admittedly healthy animals which are condemned to slaughter and for which no just reasoning exists for their condemnation. Further, insufficient compensation is paid for the taking of even the diseased animals as such animals do not constitute an emergency warranting summary destruction.

Procedural due process is violated because, as indicated by the afore-cited cases, the cattle owners do not have an opportunity to be heard on the value of their property which is to be taken for a public purpose. Under the Florida law as cited in the final decree of the Trial Court, an article of property such as is involved here with useful life and value cannot be taken without just compensation. Thus, a cow even with brucellosis has a value far in excess of the carcass or salvage value and far in excess of the $12.50 limitation. The setting of an amount of just compensation is a judicial function rather than a legislative one. To hold otherwise constitutes a violation of procedural due process. The Florida Courts have previously so held.

Further, substantial questions of a Federal nature are presented by this case due to the fact that the case affects every single cattle owner and every single beef and dairy cow in the United States. The evidence overwhelmingly demonstrated that this is a combined Federal and State program. Most of the veterinarians who testified on behalf of the Commissioner of Agriculture were Federal employees who indicated the extremely important role which the Federal Government plays in this brucellosis program throughout the entire country. These witnesses indicated that every state in the United States has a similar brucellosis program but that each program is the result of state legislation. The Federal Government acts as an overseer in regard to each such state program. The state programs are the result of the recommendations and general guidelines impressed upon each state by the Federal Government. If Florida were to change its program, threats of embargoes by the Federal Government against cattle shipments from the State of Florida have been made and were testified to in the trial. Although there is no specific Federal legislation in this area, such legislation would be war-

ranted under the commerce clause of the Federal Constitution. This power is in fact being asserted over the state by the Federal Department of Agriculture despite the fact that specific legislation does not govern in the area of brucellosis eradication and control.

Copies of the final decree of the Circuit Court in and for the Nineteenth Judicial Circuit and of the Opinion of the Florida Supreme Court are included herewith as an appendix to this jurisdictional statement.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing JUDICIAL STATEMENT has been furnished, by mail, ROBERT A. CHASTAIN, Acting Chief Counsel, Department of Agriculture, Tallahassee, Florida; and JACK SHOEMAKER, Resident Counsel, Department of Agriculture, Tallahassee, Florida, Attorneys for Appellee, this 17th day of September, 1969.

JOHN R. BERANEK
Attorney

APPENDIX

IN THE CIRCUIT COURT, NINETEENTH JUDICIAL CIRCUIT IN AND FOR MARTIN COUNTY, FLORIDA

DOYLE CONNOR, as Commissioner of Agriculture for the State of Florida,
Plaintiff,
vs.
REUBEN CARLTON,
Defendant.
Case No. 518

DOYLE CONNOR, as Commissioner of Agriculture for the State of Florida,
Plaintiff,
vs.
H. C. WILLIAMSON,
Defendant.
Case No. 519

H. C. WILLIAMSON,
Plaintiff,
vs.
DOYLE CONNOR, as Commissioner of Agriculture, et al.,
Defendants.
Case No. 717

G. W. HAIR, JR.,
Plaintiff,
vs.
DOYLE CONNOR, as Commissioner of Agriculture, et al.,
Defendants.
Case No. 718

REUBEN CARLTON,
Plaintiff,
vs.
DOYLE CONNOR, as Commissioner of Agriculture, et al.,
Defendants.
Case No. 719

FINAL DECREE

The above entitled suits have been consolidated for trial.

In suits number 518 and 519, Doyle Connor, as Commissioner of Agriculture of the State of Florida, as plaintiff, asserts that under Chapter 585 Florida Statutes, 1967, he is under a duty to establish, maintain and enforce quarantine areas within the State and restrict, regulate or prohibit the movement or transportation of domestic animals found by plaintiff, by rule to be carriers of any contagious, infectious or communicable disease, into, from, and within such areas when necessary for the carrying out of any of the purposes of said law and for the prevention or control of the spread or dissemination of any contagious, infectious or communicable diseases among said animals, and to make, promulgate and enforce rules and regulations governing the introduction of said animals into or within the State, which rules and regulations, when deemed necessary by the plaintiff, may require that all domestic animals moved into the State be covered by an official health certificate and requisite test charts, and whenever any dangerous or transmissible animal disease exists anywhere within the State, the plaintiff may examine, test and treat any infected, exposed, suspected or susceptible animal and may quarantine any premises, areas or localities in connection therewith.

Plaintiff further asserts that in pursuance of his lawful authority and duty, plaintiff passed rules to control and eradicate brucellosis in Florida, which regulations, among other things, provided that all cattle in Florida are subject to the brucellosis test and that the owner or custodian thereof is required, upon receipt of official notice from the plaintiff to present his said cattle for tests as therein directed. On August 30, 1967, plaintiff caused notice to be given to the defendant, directing that he, as an owner or custodian of cattle in Martin County, Florida, present all cattle located on his premises (excluding

certain cattle specifically mentioned) for brucellosis tests on said premises at 8:00 a. m. on September 11, 1967; that the defendant disregarded his duty in this regard and failed and neglected to cause his cattle to be presented at the time specified in said notice or at any other time; that the brucellosis testing program in Martin County, Florida, since its inception, has revealed more than 1171 brucellosis reactors in this county, some of which have been found in herds adjacent to the area where the defendant's herd is now located. Plaintiff, noting the incidence of brucellosis in this county has reasonable cause to believe that the defendant's herd may have such diseased animals in it. Defendant is under duty to comply with all rules and regulations of plaintiff while the area in which his cattle herd is located is under the area or county-wide quarantine which quarantine was placed upon Martin County, Florida, by plaintiff's rules aforementioned.

The plaintiff seeks a mandatory injunction requiring defendant to present his cattle for testing pursuant to said regulations.

The defendant in suits number 518 and 519 has filed his answer denying the material allegations of the amended complaint in suit No. 518 and the complaint in suit No. 519 and asserting various affirmative defenses, among others, that there is no valid emergency under which the police power of the State may be exercised which would entitle the plaintiff to the relief asked for herein, but to the contrary, the purposes of the test and slaughter program referred to in the complaint are for administrative control of the transportation of cattle, and this program is not designed to protect the health, safety and morals of the community. That the statutes and rules of the Department of Agriculture under which this suit

is brought are contrary to the Constitution of the State of Florida and the Constitution of the United States in this case, due to the fact that: the regulations set up by the plaintiff allow healthy animals to be destroyed without just cause or full compensation to the citizen who loses his property; that said rules and regulations require that all cattle classified as reactors be immediately branded with a "B" (at least 2″ x 2″) and slaughtered within 15 days, and Florida Statutes limits the indemnity for said cattle to $12.50 for any one animal, contrary to Section 12, Declaration of Rights, Constitution of Florida; that the tests approved by the Department of Agriculture in its rules are so unreliable that many healthy cattle are classified as "reactors", then branded and destroyed, thereby appropriating the defendant's private property for public use without just compensation and without due process of law; and the regulations and rules of the Department of Agriculture do not provide to the cattle owner a notice and hearing that is full and fair, not merely colorable or illusive, prior to condemnation, but proceed upon testing to condemn and brand "reactors", whether they are actively diseased or not, depriving the cattle owner of due process of law.

The defendant in each suit, No. 518 and No. 519, also filed a counter-claim re-asserting his affirmative defenses as a counter-claim and seeks a decree determining each and all portions of said Chapter 585 and the Rules and Regulations of the Department of Agriculture, Division of Animal Industry, Chapter 7C-6, as each relates to the bovine brucellosis plan of test and slaughter to be unconstitutional.

In each suit number 717, 718 and 719, the plaintiff, pursuant to Section 585.45 Florida Statutes 1967, seeks a judicial declaration as to the validity of an order of the

Department of Agriculture, Division of Animal Industry of the State of Florida, whereby cattle owned by plaintiff are to be tested and inspected for brucellosis infection by the Department, alleging that such activities under Chapter 585 Florida Statutes 1967, are in violation of plaintiff's constitutional rights. The defendant has answered in each suit.

The consolidated suits have been tried. The Court heard the testimony of the witnesses and argument of counsel for the respective parties. The testimony is voluminous, four and one-half days were required to present it. Five or more experts testified, several of them being shown to be the outstanding authority in their particular field and on the subject which they testified about in the United States or in the world.

Section 585.15 Florida Statutes provides:

> "The following named diseases and any other contagious, infectious, or communicable diseases now or hereafter proclaimed by either the commissioner or the technical committee under its emergency powers to be of a dangerous transmissible nature, shall be known as dangerous, transmissible diseases: Glanders . . . brucellosis . . . ."

The Commissioner of Agriculture, under Section 585.16 Florida Statutes, is authorized:

> "Whenever any of the diseases enumerated in Sec. 585.15 or any disease now or hereafter proclaimed by either the commissioner or the technical committee under its emergency powers to be of a dangerous or transmissible nature, shall exist anywhere within the state, or whenever it is deemed necessary or advisable to dip, examine, test, identify, treat or destroy, the division may, or through its representatives and agents, dip, examine, test, identify, treat or destroy, any infected, exposed, suspected or susceptible animal

and any goods, products or materials that may carry contagion, or may quarantine on or in, for or against any premises, areas, or localities within the state; provided that provisions of this chapter shall not apply to game animals."

Said Chapter 585 also provides:

"585.08. General Powers of the Department; rules and regulations.—The division of animal industry is authorized through the commissioner to:

(1) Establish, maintain and enforce quarantine areas within the state, or the entire state, and restrict, regulate or prohibit the movement or transportation of domestic animals and all other animals or cattle found, determined or suspected by the commissioner, or the technical committee under its emergency powers, to be carriers of any contagious, infectious or communicable disease. . . .

(2) . . .

(3) Make, promulgate, amend, repeal and enforce rules and regulations;

(a) For the carrying out of the provisions, purposes and requirements of this chapter;

(b) . . .

(c) Governing the disposal or destruction of carcasses of domestic and other animals, which are condemned or die from or while afflicted with any contagious, infectious, or communicable disease, in such manner as to prevent the spread or continuance of such contagion or infection;

(4) Condemn and destroy any domestic animals, or other animals affected with any contagious, infectious, or communicable disease, or which have been exposed to or are suspected of being liable to spread any contagious, infectious, or communicable disease.

(5) Condemn and destroy any barn, yard, shed, corral, or pen which, in the opinion of the commissioner, or the technical committee under its emergency powers, is liable to convey the said infection or contagion."

"585.09 Procedure for condemnation of domestic animals and property by department.—Condemnation and destruction of domestic animals, barns, yards, sheds, corrals and pens, as provided in Sec. 585.08 shall take place only after a fair appraisal of the value of the property, which value shall be determined by the commissioner and the owner; provided, however, should the commissioner and the owner be unable to agree on such value, the value shall then be determined by three disinterested appraisers, one to be appointed by the commissioner, one by the owner of the property, and the third to be selected by these two. The appraised price, subject to the provisions of Sec. 585.10, shall be paid by the department as other expenses are paid. If the owners or person in charge of such domestic animal, barn, yard, shed, corral, or pen fails or refuses to name his or her appraiser within five days after requested by the commissioner to do so, or refuses to permit the same to be condemned and destroyed, the commissioner may make an order to the sheriff of the county wherein the property lies, directing him to destroy such domestic animal, barn, yard, shed, corral or pen, in the manner to be prescribed by such order, which order shall be executed by said sheriff forthwith. Upon the destruction of the said property by the said sheriff, the department shall have the right to recover, from the owner of the property destroyed, all costs and expenses incurred by it in connection therewith."

"585.10 Condemned and destroyed animals; limitation on payment to owner.—The department may indemnify and reimburse the owners of all animals condemned and destroyed by order of the commissioner in cases where such animals have reacted to

the tuberculin test or the agglutination blood test for brucellosis (Bang's disease); provided, however, that such indemnity or reimbursement shall not exceed the sum of twelve dollars and fifty cents for any one animal."

The rules and regulations under which the plaintiff administers the brucellosis program are Chapter 7C-6 Rules of the Department of Agriculture Division of Animal Industry, Brucellosis.

When cattle are tested under the provisions of Chapter 7C-6 and found to be reactors, ie., infected with brucellosis under the rules and regulations contained in said Chapter, they are required to be branded on the left jaw with the letter "B" at least 2 inches in height and at least 2 inches in width for permanent identification (Sec. 7C-6.12) and shall be removed from the herd and sent to slaughter within 15 days (Sec. 7C-6.02(2)(d), and must be sold at public auction markets only after sale of all other cattle has been completed. (Sec. 7C-6.13)

In the case of Campoamor v. State Live Stock Sanitary Board, 1938, 182 So. 277, which involved testing dairy cattle for Bang's disease (brucellosis), the Supreme Court of Florida stated:

> "The power to enact laws to prevent the spread of infectious or contagious diseases among domestic animals is generally recognized as a proper exercise of the police power. The Federal government under the commerce clause, U. S. C. A. Const., art. 1, Sec. 8, cl. 3, and the State government under the police power may in conjunction enact laws establishing quarantine for the purpose of isolating diseased or suspicious animals. Laws of this kind should not be construed to delegate powers not warranted by the Constitution but they should be liberally construed to effectuate the purpose for which they were intended."

"In case of danger from epidemics among domestic animals from Bang's or other communicable diseases, it may be necessary to provide for summary abatement or destruction of diseased animals. Epidemics among domestic animals sometimes become very pernicious and destructive. It would be a strange anomaly to hold that the government was effete and helpless in the face of circumstances of this kind to take steps or pass laws to meet such emergencies.

It is common knowledge that when domestic animals are permitted to become congested, they are more susceptible to disease and epidemics than when limited in numbers to the open range. To contend that the law does not expand to meet and cope with emergencies that arise incident to such congestion is more than we are yet ready to accept. Neither can one affected call to his aid an assumed constitutional guaranty to defeat the power of the law to deal with such emergencies. We are fully conscious of the profound significance of constitutional guaranties in our scheme of government but they are not something rigid and straight-jacketed by which one may defy the public welfare nor may they be employed to hazard the welfare of or endanger the life of an important industry.

The doctrine of due process has no such implication when the life, health, and welfare of man or beast is involved as it has when other tangible property is at stake. In the latter case, the courts have rigidly enforced the requirement as to notice, hearing, factual investigation, and compensation, but in the former case, when epidemics arise or are threatened or when the common good is otherwise in hazard, summary proceedings may be authorized and they will be upheld so long as they go no further than are reasonably necessary to meet the situation. Statutes authorizing destruction of property under such circumstances have usually provided compensation to the owner but on the theory of benevolence or that the community should help bear the loss and not in response to the doctrine of due process. Whether they provide com-

pensation or not, they have been upheld. Julia Miller et al. v. W.J. Schoene, 276 U. S. 272, 48 S. Ct. 246, 72 L.Ed. 568; Annotation 67 A.L.R. 208; Cooley, Constitutional Limitations, 878; American Jurisprudence, Vol. II, page 810."

In Bedenbaugh v. Adams, 1956, 88 So.2d 765, this statement appears:

"Appellee contends that under our opinion in Campoamor v. State Live Stock Sanitary Board, 136 Fla. 451, 182 So. 277, The Livestock Board can exercise the powers granted to it by Sections 585.15 and 585.16, Florida Statutes, F. S. A., only in the event of an emergency of epidemic proportions. We find nothing either in the cited decision of the Statutes that so limits the Board's powers. Such a limitation might be read into the Act as a reasonable prerequisite to the enforced destruction of a farmer's animals to prevent the spread of a disease but in the administering of hog cholera serum nothing is forced upon the farmer."

The Court finds from the evidence that brucellosis has existed in cattle in the State of Florida and in Martin County, Florida, for a number of years, that the incidence of such disease in cattle has not appreciably increased for some years and is not appreciably increasing at this time and that there is no threatened or actual epidemic or emergency in the cattle industry in the State of Florida or in Martin County, Florida, due to such disease at this time. In fact, the evidence shows that during the last ten to fifteen years or more, the control of brucellosis in cattle is being accomplished quite well through a vaccination program. The Court further finds that as the bovine brucellosis eradication program is now being administered by the Commissioner of Agriculture in Martin County, Florida, that is, under the tests that are being used to determine which animals are infected, some healthy animals are shown by the tests to be infected, when in fact they are not infected

and such animals are required to be sent to slaughter along with infected animals and sent as infected animals. It is true that the percentage or number of healthy animals required to be sent to slaughter along with infected animals in most instances is not large, but such percentage or number cannot be said to be insignificant, and the evidence does definitely show that some healthy animals are sent to slaughter along with the infected animals due to the ineffectiveness of the tests being used, even though the methods being used by the plaintiff to detect the infection are those generally employed and are known to be the most effective at this time. The evidence also shows that some infected animals sent to slaughter are still productive and have a value other than a carcass value or for slaughter.

The defendants contend that any statute, rule, regulation or program which requires them, when there is no threatened or existing epidemic or emergency, to involuntarily send any non-infected animal or infected animal which is still useful and productive and which has a value other than a carcass value or for slaughter, to slaughter, without first affording the owner a full and fair hearing is unconstitutional under Section 12 of the Declaration of Rights of the State of Florida.

In the case of *Corneal* v. *State Plant Board*, 1957, 95 So.2d 1, a case involving the validity of a rule of the State Plant Board looking toward the control and containment of a citrus plant disease known as "spreading decline" which rule provided for the destruction of citrus trees, the Supreme Court of Florida stated:

> "While the police power is very broad in concept, this legislative power is fenced about by constitutional limitations, and it cannot properly be exercised beyond such reasonable interferences with the liberty of action of individuals as are really necessary to pre-

serve and protect the public health, safety and welfare. See Eelbeck Milling Company v. Mayo, Fla. 1956, 86 So.2d 438. In enacting regulatory measures which protect but do not destroy property, the law need not restrict itself to conditions actually harmful but may require precautions within the whole range of possible danger. Cf. Richardson v. Baldwin, 1936, 124 Fla. 233, 168 So. 255; State Plant Board v. Roberts, 1916, 71 Fla. 663, 72 So. 175; Los Angeles County v. Spencer, 126 Cal. 670, 59 P. 202. But the absolute destruction of property is an extreme exercise of the police power and is justified only within the narrowest limits of actual necessity, unless the state chooses to pay compensation. See Freund, Police Power, Sec. 520, p. 555. Domestic animals that are infected with a contagious disease and are incapable of being put to any lawful use by the owner may be summarily destroyed for the protection of the public health and safety in the exercise of the police power, although statutes providing for such destruction usually provide for compensation to the owner."

"Here, as has been noted, the regulation in question involves the destruction of healthy trees, as well as trees affected with spreading decline. Even the affected trees cannot be said to be completely worthless, since they continue to bear fruit and do not die."

"In support of the validity of the regulation, the Plant Board adduced the testimony of many witnesses that, in their opinion, the pull and treat program was an effective method of containing and preventing the further spread of the burrowing nematode and that they knew of no other method of containment. These witnesses also testified that spreading decline was a serious threat to the citrus industry and a few said that they thought an emergency existed. That no real emergency exists is clearly apparent from what has

been said before as to the slowness with which the burrowing nematode progresses from tree to tree and as to the very small percentage of the total citrus acreage presently affected by a disease that has apparently been present in this state for almost thirty years."

. . .

". . . But we cannot overlook the fact that the compulsory program requires the destruction of one owner's healthy trees for the purpose of protecting the healthy trees of his neighbor. Even if it is assumed that *all* of the healthy trees so destroyed would after an indeterminate number of years be infested with burrowing nematodes and thus be less productive than before, the fact remains that some of these healthy trees will be fully productive for at least a year or two and others for several years, depending on their proximity to a tree infested with burrowing nematodes. And from what has been said about the habits of the burrowing nematode, it is clear that a healthy tree, uninfested with a burrowing nematode, certainly offers no *immediate* menace to the trees in a neighboring grove.

We have found no case—and none has been cited—holding that a healthy plant or animal, not *imminently* dangerous, may be destroyed without compensation to the owner in order to protect a neighbor's plant or animal of the same specie. And, indeed, we would not be inclined to follow such a decision, had one been made. The increasing number of regulatory measures imposed upon its citizens by government at all levels—city, county, state and national—has perhaps accustomed us to restrictions unthought of at the time Professor Freund wrote his work on Police Power, cited above. But we hope we never become insensitive to the clear and indefeasible property rights of the people guaranteed by our state and federal organic law, nor forgetful of the principle of universal law that the right to own property is an indispensable attribute of any so-called 'free government' and that all other

rights become worthless if the government possesses an untrammeled power over the property of its citizens."

The Supreme Court of Florida, in State Plant Board v. Smith, 1959, 110 So.2d 401-407, another case dealing with the destruction of citrus trees under the program looking toward the containment and eradication of the citrus disease "spreading decline", stated:

"Art. 2 of our constitution provides for the distribution of powers among the legislative, executive and judicial branches of our government and states that 'no person properly belonging to one of the departments shall exercise any powers appertaining to either of the others, except in cases expressly provided for by this Constitution.' It is settled in this state that 'the determination of what is just compensation for private property that is taken for public use is a judicial function that cannot be performed by the Legislature either directly or by any method of indirection.' Spafford v. Brevard County, supra, 110 So. 451, 454. While this was a case involving the taking of property under the power of eminent domain, it is equally applicable to the legislative encroachment upon the powers of the judiciary attempted here in the taking of property under the police power.

"We next consider the question of whether the Chancellor erred in holding the Act invalid insofar as it authorized the destruction of a grove owner's healthy trees 'before compensation shall be paid or secured to' the owner. Here, again, the Chancellor is using the language of Sec. 29 of Art. 16, prohibiting the taking of property by eminent domain proceedings 'until full compensation therefor shall be first made to the owner, or first secured to him by deposit of money; * * *' But the analogous question under the due process clause of Sec. 12, supra, is whether the owner should have been given the opportunity to have an administrative determination by the Board, and a judi-

cial review of such administrative determination, of the amount of compensation he should receive, prior to the destruction of his healthy trees. In other words, does a summary destruction of an owner's trees followed by an administrative and judicial hearing on the question of the amount of compensation to be paid to him, comport with 'due process'? An allied question, contended for in the lower court and here argued by the plaintiffs-appellees, is whether summary destruction of his trees without giving him an opportunity to be heard either administratively or judicially on the question of the propriety or reasonableness of the action by the Board's agents, is a denial of due process.

Due process of law is not an exact concept. Generally speaking, it 'implies conformity with the natural and inherent principles of justice for the protection of individual rights, forbids the taking of one's property without compensation, and requires that no one be condemned in person or property without opportunity to be heard.' Louis K. Liggett Co. v. Amos, 1932, 104 Fla. 609, 141 So. 153, 156. The opportunity to be heard 'must be full and fair, not merely colorable or illusive.' Ryan's Furniture Exchange, Inc., v. McNair, 1935, 120 Fla. 109, 162 So. 483, 487. Accord: Redman v. Kyle, 1919, 76 Fla. 79, 80 So. 300.

It is well settled, however, that the concept of due process does not necessarily require the granting of a hearing prior to the taking of official action in the exercise of the police power. Where a compelling public interest justifies the action, the Legislature may authorize summary action subject to later judicial review of the validity thereof. See Yakus v. United States, 1944, 321 U.S. 414, 64 S.Ct. 660, 88 L.Ed. 834, often cited in cases involving 'due process.' Thus, it has long been established that in the exercise of its police power the state may summarily seize or destroy diseased cattle, contaminated food, obscene publications, illicit intoxicants, narcotics, prohibited weapons, gambling devices and paraphernalia, and

other property that menaces the public health, safety or morals. The seizure of such goods is justified because the danger exists that the property deemed malefic will be distributed to the public to its injury, or used for an illegal purpose, absent a seizure and pending a proceeding to determine the propriety of the seizure. Cf. Metallic Flowers v. City of New York, 1957, 4 A.D.2d 292, 164 N.Y.S.2d 227.

It is obvious that no such danger exists in the situation here. The citrus disease here involved—spreading decline caused by a burrowing nematode—is not carried by the wind or by insects from grove to grove; 'the burrowing nematode causing the disease travels underground from one tree to another at an average rate throughout the state of 1.6 trees, or 36 feet, per year.' Corneal v. State Plant Board, supra, 95 So.2d 1, 2. The fruit borne by the healthy trees, even though the tree may have some infestation, is no different from that on the uninfested trees. The only possible reason for the *summary* destruction of the healthy trees would be the imminent danger of the spread of the disease from an infested to a non-infested grove. Since the facts developed in the Corneal case, and alleged in the complaint in the instant case, show that there is no such danger, we cannot find a 'compelling public interest' sufficient to justify making an exception to the basic and fundamental rule of due process, requiring notice; and a hearing before depriving a person of a substantial right. This is particularly true in view of the fact that we can find no justification for the legislative declaration that 'No compensation shall be made by the board for the destruction of trees which are infested by the burrowing nematode at the time of their destruction.' As noted above, the question of what is 'just compensation' must be finally determined by the judiciary, unless the grove owner is satisfied by the amount offered by the Board's agent. And, as previously stated, an infested tree may be healthy, in the sense that it has not yet begun to decline, and still commercially profitable. A court

might wish to consider the profits expected from such productive, although infected, tree in determining 'just compensation.' And it is apparent that an X-mark on a map, showing an infested tree destroyed under the Board's pull and treat program, and the testimony of the parties as to the condition of the tree, would not be the best evidence of the condition of the tree. Thus, in addition to the fact that the statutory provision quoted, immediately above is an invasion of the province of the judiciary, it might also deny to the grower a hearing that is 'full and fair, not merely colorable or illusive.' Ryan's Furniture Exchange Inc., v. McNair, supra, 162 So. 483.

In summary, the Chancellor was correct in holding invalid those portions of the Act and the Rules of the Board placing a ceiling of $1,000 on the compensation to be paid to the grove owner and authorizing summary destruction of the owner's citrus trees prior to a hearing on the adequacy of compensation proposed to be paid to him. The owner is also entitled to an opportunity to be heard on the propriety or 'reasonableness' of the administrative action of the Board's agents insofar as the program of pull and treat proposed for his grove is concerned, prior to the destruction of his citrus trees under such program. See Bailey v. Van Pelt, 1919, 78 Fla. 337, 353, 82 So. 789. We also agree with the Chancellor's indirect holding that the provision denying compensation for *infested* trees, without regard to whether they are still productive and not yet 'declined', is unlawful."

The pronouncements of our Supreme Court in the two cases immediately above set forth are applicable to the provisions of Sec. 585.09 and 585.10 Florida Statutes and Sec. 7C-6.02(2)(d), Rules of the Department of Agriculture, Division of Animal Industry, Brucellosis, when they are used to require owners of cattle, at a time when there is no threatened or existing epidemic or emergency, to involuntarily send a non-infected animal or infected an-

imal which is still useful and productive and which has a value other than a carcass value or for slaughter, to slaughter, prior to a judicial determination of the value of such animal.

Upon the evidence and the above authorities, the Court determines that Sec. 585.09 and Sec. 585.10 Florida Statutes 1967, and Sec. 7-C-602(2)(d), Rules of the Department of Agriculture, Division of Animal Industry, are unconstitutional; that the plaintiff in suits Nos. 518 and 519 is not entitled to the relief sought and that the counter-claimant in suits Nos. 518 and 519 and the plaintiff in suits Nos. 717, 718 and 719 are entitled to the relief specifically granted and hereinafter set forth herein.

Upon consideration, it is

ORDERED AND ADJUDGED:

1. That the amended complaint in suit No. 518 and the complaint in suit No. 519 be and the same is each hereby dismissed.

2. That the relief sought in the counter-claim in suit No. 518 and in the counter-claim in suit No. 519 be and the same is in each suit hereby granted to the extent that Sec. 585.09 and Sec. 585.10 Florida Statutes, 1967, and Sec. 7C-6.02(2)(d) Rules of the Department of Agriculture, Division of Animal Industry, Brucellosis, and each of said sections, severally, is hereby determined to be unconstitutional and void.

3. That the order described in paragraph 1 of the complaint in suit No. 717, suit No. 718 and suit No. 719 and in each of them be and the same is hereby determined to be invalid and of no effect for the reasons hereinabove set forth.

4. That all relief prayed for by any of the parties and in each of said consolidated suits not hereinabove granted is denied.

5. That a ruling on all motions on which a ruling was reserved until trial is granted or denied in such manner as to conform with the Court's rulings hereinabove set forth and if not covered in such manner, same is hereby denied.

DONE AND ORDERED at Vero Beach, Indian River County, Florida, this 10 day of September, A. D. 1968.

/s/ D. C. Smith
Circuit Judge

Copy furnished counsel.

NOT FINAL, UNTIL TIME EXPIRES TO FILE REHEARING PETITION AND, IF FILED, DETERMINED.

IN THE SUPREME COURT OF FLORIDA
JANUARY TERM, A. D. 1969

DOYLE CONNER, as Commissioner of Agriculture, State of Florida,
Appellant,
vs.
REUBEN CARLTON, et al.,
Appellees.
} Case No. 37,932

Opinion filed May 14, 1969
An Appeal from the Circuit Court for
Martin County, D. C. Smith, Judge
Wilton R. Miller and Jack Shoemaker, for Appellant.

Jones, Adams, Paine & Foster, Charles H. Damsel, Jr. and John R. Beranek, for Appellees.

ERVIN, C. J.

We review an appeal of Appellant Doyle Conner, as Commissioner of Agriculture for the State of Florida, from an adverse final decree of the Circuit Court of Martin County refusing to enforce or permit implementation of a program inaugurated by the Commissioner in the county to control, eradicate, and prevent the spread of brucellosis (Bang's disease) in cattle. Specifically, Appellees refused to comply with a ten days' notice from the Commissioner to present their cattle for brucellosis tests. A mandatory injunction to require their compliance was rejected in the final decree.

The program requires cattle owners to present their cattle for tests by the Commissioner's agents to determine if they are "reactors" of the disease, i.e., infected

with brucellosis. If any cattle are found by such tests to be reactors they are required to be immediately branded on their left jaws with the letter "B" at least 2 inches by 2 inches, removed from the herd and sold at public auction markets and slaughtered, all within 15 days after they have been identified as reactors. The indemnity or compensation paid by the State for each animal slaughtered is restricted to not more than $12.50.

The trial court in its final decree found there was no "valid emergency under the police power of the state" which would entitle the Commissioner to proceed with the brucellosis control program in Martin County. It found the purpose of the control program was "for administrative control of the transportation of cattle, and this program is not designed to protect the health, safety and morals of the community."

The trial court further found from the evidence that brucellosis has existed in cattle in Martin County and the State for a number of years, that the incidence of such disease has not appreciably increased for some years, and

> ". . . that there is no threatened or actual epidemic or emergency in the cattle industry in the State of Florida or in Martin County, Florida, due to such disease at this time. In fact, the evidence shows that during the last ten or fifteen years or more, the control of brucellosis in cattle is being accomplished quite well through a vaccination program. The Court further finds that as the bovine brucellosis eradication program is now being administered by the Commissioner of Agriculture in Martin County, Florida, that is, under the tests that are being used to determine which animals are infected, some healthy animals are shown by the tests to be infected, when in fact they are not infected and such animals are required to be sent to slaughter along with infected animals and sent as infected as animals. It is true that the percentage or number of healthy

animals required to be sent to slaughter along with infected animals in most instances is not large, but such percentage or number cannot be said to be insignificant, and the evidence does definitely show that some healthy animals are sent to slaughter along with the infected animals due to the ineffectiveness of the tests being used, even though the methods being used by the plaintiff [Commissioner of Agriculture] to detect the infection are those generally employed and are known to be the most effective at this time. The evidence also shows that some infected animals sent to slaughter are still productive and have a value other than a carcass value or for slaughter."

Having made the foregoing findings, the trial judge proceeded to strike down as unconstitutional Sections 585.09 and 585.10, F.S., which are key sections of the enabling statutes for the Commissioner's brucellosis control program. The decision also struck the rule or regulation, Section 7-C-6.02(2)(d), of the Department of Agriculture, Division of Animal Industry, adopted by the Commissioner to implement Sections 585.09 and 585.10. In holding the statutes unconstitutional our jurisdiction of this appeal was invoked.

Sections 585.09 and 585.10, to be understood, must be read in connection with related provisions of Chapter 585, F.S. Such related provisions (a) identify and declare *brucellosis* and other named diseases to be known as dangerous, transmissible diseases (§585.15); (b) provide that when such diseases enumerated in Section 585.15 shall exist in the state, the Commissioner through the Division of Animal Industry,

> ". . . may, or through its representatives and agents, dip, examine, test, identify, treat or destroy, any infected, exposed, suspected or susceptible animal and any goods, products or materials that may carry con-

tagion, or may quarantine on or in, for or against any premises, areas, or localities within the state. . ." (§585.16, F.S.)

and, (c) provide that the Commissioner is authorized to "Condemn and destroy any domestic animals, or other animals affected with any contagious, infectious, or communicable disease, or which have been exposed to or are suspected of being liable to spread any contagious, infectious, or communicable disease." (§585.08 (4))

Sections 585.09 and 585.10 provide that such condemnation and destruction of domestic animals shall take place only after a fair appraisal of their value, which shall be determined by the Commissioner and the owner; provided if they are unable to agree, the value thereof shall be determined by three disinterested appraisers, one to be appointed by the Commissioner, one to be appointed by the owner, and the other by the first two appraisers. If the owner refuses to name his appraiser in five days or to permit his condemned domestic animal to be destroyed, the Commissioner may make an order directing the county sheriff to destroy such animal. The Department of Agriculture is authorized to indemnify and reimburse owners of all animals condemned and destroyed by order of the Commissioner in cases where such animals have reacted to the tuberculin test or the agglutination blood test for brucellosis (Bang's disease) provided, however, that such indemnity or reimbursement shall not exceed the sum of $12.50 for any one animal.

The defendant owners of cattle in Martin County successfully contended below that any statute, rule, regulation or program which requires them, when there is no threatened or existing epidemic or emergency, to involuntarily send any noninfected animal or infected animal which is still useful and productive and which has

a value other than a carcass value, to slaughter without first affording the owner a full and fair hearing is unconstitutional under Section 12 of the Declaration of Rights of the Florida Constitution, which provides "nor shall private property be taken without just compensation."

In holding Section 585.09 and 585.10, F.S. invalid, the trial court relied upon the cases of Corneal v. State Plant Board (Fla. 1957), 95 So.2d 1, and State Plant Board v. Smith (Fla. 1959), 110 So.2d 401.

We do not believe these cases are apposite to the situation in the instant case and accordingly reverse for the reasons following:

We do not think slow spreading decline in citrus trees through the action of the burrowing nematode dealt with in the cases last cited above can be logically equated with the highly contagious, communicable disease of brucellosis that infects both cattle and people. The compelling impact of the latter upon the public interest and community health is much more extensive, rapid and virulent than is spreading decline. Brucellosis affects the public health while such is not the case with spreading decline. Ordinarily, diseases affecting the health of persons or domestic animals are considered in law to be more malefic than diseases infesting or infecting plant life, and do not necessarily require a showing of their emergent or epidemic effects as a predicate compelling public interest for their summary eradication and control. The nature, control and treatment of brucellosis is discussed in Snapp and Neumann, *Beef Cattle*, 5th Ed., pages 619 and 620, as follows:

> "Brucellosis may also be called Bang's disease, contagious abortion, or, simply, abortion. Abortion of the infectious type is one of the worst diseases with which

cattle breeders have to contend. It is caused, as a rule, by a specific organism known as *Brucella abortus*, although other uterine infections of a more general character may likewise bring about a number of abortions in a herd of cows. Apparently infection generally gains access to a new victim through the mouth, having been scattered in the uterine discharge of an aborting animal over grass, hay, and other feed materials, or into the water source. All aborting cows should be segregated from the herd and kept in quarantine until at least 3 weeks after all uterine discharge has ceased, or until a negative blood test has been obtained. Some authorities hold that an infected cow is never rid of the organisms, although she may eventually become sufficiently immune to calve at the normal time. . . .

"There is no known cure for brucellosis. Immunization of heifer calves between 6 and 8 months of age with a standardized live vaccine, *Brucella abortus strain 19*, is a reasonably effective immunizing agent. In older animals, immunization may effectively prevent the disease but it interferes with blood agglutination tests, thus making later blood tests difficult to interpret. For this reason, older females are seldom vaccinated. Eradication of brucellosis is usually most successful if pursued on an area plan. Such eradication plans are operated under joint federal-state arrangement. States with less than 1 per cent incidence are called *modified brucellosis-free areas.* Individual herds which are tested annually by a state or federal veterinarian and found to be free of reactors in two successive years are designated as *accredited herds.* Federal and state regulations pertaining to the transportation of breeding cattle may vary from area and are subject to change, as are the various approved plans for eradication of the disease. Every breeder of beef cattle, therefore, should keep abreast of the latest regulations in effect in his area.

"The handling of infected animals or the drinking of milk from infected cows can result in contraction of the disease by man, in which case it is called *undulant fever*. The disease is not often fatal to man but a long, debilitating illness results." (Emphasis in text.)

In Campoamor v. State Livestock Sanitary Board (1938), ... Fla. ....., 182 So. 277, we said:

"Chapter 17273, Acts of 1935, authorizes the State Live Stock Sanitary Board to co-operate with the Federal Bureau of Animal Industry in the control of Bang's disease and to induce the owners of live stock to accept indemnity for animals found to be affected with any communicable disease for which they may have to be slaughtered. Under State regulation, the owner of cattle slaughtered gets from the State $12.50 for each cow and the value of the carcass. Under Federal regulation, if the animal slaughtered is an ordinary grade cow, he gets from the Federal Government $25.00 and if pure bred, he gets $50.

"We cannot bring ourselves to hold that such provision for compensation does not meet the requirement of due process in a situation like this. The value of an animal infected with Bang's disease is indeed problematical in view of the dire results that may flow from it. It is on this theory that summary destruction of diseased animals has been upheld and who knows that we may not be soon finding that the destruction of such animals may be enforced in the interest of the community." (At 279.)

In State Plant Board v. Smith, supra, we said:

"It is well settled, however, that the concept of due process does not necessarily require the granting of a hearing prior to the taking of official action in the exercise of the police power. Where a *compelling public interest* justifies the action, the Legislature may authorize summary action subject to later judicial review of the validity thereof. See Yakus v. United

States, 1944, 321 U.S. 414, 64 S.Ct. 660, 88 L.Ed. 834, often cited in cases involving 'due process.' Thus, it has long been established that in the exercise of its police power the state may summarily seize or destroy diseased cattle, contaminated food, obscene publications, illicit intoxicants, narcotics, prohibited weapons, gambling devices and paraphernalia, and other property that menaces the public health, safety or morals. The seizure of such goods is justified because the danger exists that the property deemed malefic will be distributed to the public to its injury, or used for an illegal purpose, absent a seizure and pending a proceeding to determine the propriety of the seizure. Cf. Metallic Flowers v. City of New York, 1957, 4 A.D.2d 292, 164 N.Y.S.2d 227."

The Legislature in the statute referred to has found that brucellosis disease in domestic animals represents a dangerous subject of "compelling public interest" sufficient to justify making an exception to the fundamental rule of due process or just compensation to the extent of any overage in compensation benefits above $12.50 per domestic animal.

On the merits and contrary to the findings of the trial court, our assessment of the evidence in this case is that the Commissioner was clearly justified in inaugurating the program of brucellosis control in Martin County. We find nothing in the evidence which detracts from the legislative determination that there is a compelling public interest in the summary control and eradication of brucellosis disease in the cattle industry.

During the testing program in Martin County approximately 1202 cattle were diagnosed as being infected with brucellosis. Cattle on ranches contiguous to the land of Appellees were also diagnosed as having brucellosis. The foregoing facts constituted more than a reasonable basis to suspect there might be animals infected with brucellosis

among Appellees' cattle which they refused to present for testing pursuant to direction under the Commissioner's brucellosis program for the control and eradication of the disease in Martin County.

We can find no support for the trial court's contrary ruling in other jurisdictions. See Pennsylvania Dept. of Agriculture v. Hill (1954), 3 D & C2d 302; Spillman v. Beauhamp (Ky. 1962), 362 SW2d 33; Ruona v. City of Billings (Mont.), 323 P.2d 29; Coelho v. Truckell (Cal.App.1935), 9 Cal.App.2d 47, 48 P.2d 697; Affonso v. Brock (Cal.App.1939), 29 Cal.App.2d 26, 84 P.2d 515; State ex rel. Hale v. Lawson (Ark.), 212 Ark. 233, 205 SW2d 204; State v. Splittgerber (Neb.1930), 119 Neb. 436, 229 NW 332; Loftus v. Department of Agriculture (Iowa 1930), 211 Iowa 566, 232 NW 412, appeal dismissed 1931, 51 S.Ct. 647, 283 U.S. 809, 75 L.Ed. 1427; Straubel v. Peterson (Neb.), 155 Neb. 448, 52 NW2d 307; State v. Schriber (Ore.) 205 P.2d 149. See also: 8 ALR 67; 65 ALR 525, 67 ALR 208, and 70 ALR2d 852, 3 CJS, Animals, §55, pgs. 1167-68, and 4 Am.Jur.2d, Animals, §35, pgs. 286-87.

The record indicates that the test and slaughter program for the eradication of brucellosis has been conducted throughout the nation according to rules and laws similar to Florida's.

The contention that an epidemic or emergency must always pre-exist before summary proceedings may be employed to eradicate infectious and contagious diseases appears to have no support in decisions throughout the country.

Dr. N. B. McCullough, one of the world's best qualified authorities on brucellosis, testified that discontinuance of the Martin County eradication program would increase the incidence of the disease in the County: "therefore,

an increase in exposure to man . . . and it would be my opinion in relatively few years we would be back practically to where we were twenty years ago in terms of numbers of human cases."

There is no competent testimony in the record which indicates that the control of brucellosis is being accomplished through a vaccination program. Nor was there any conclusive evidence that healthy animals were being sent to slaughter. There was evidence that there is the possibility human errors might be made in the state tests for brucellosis, as in the case of any medical diagnostic test, but there is no evidence in the record of any healthy animal being improperly diagnosed as diseased and slaughtered.

The finding of the trial court that brucellosis has not appreciably increased in Martin County does not support the holding the existing statutes are invalid. To the contrary, the evidence shows that the state's test and slaughter program has dramatically reduced the incidence in the state of brucellosis in cattle and undulant fever in humans.

We do not find any unconstitutionality in Sections 585.09 and 585.10 as written, nor do we find them unconstitutional in their application to the facts appearing in the record. The subject legislatively treated here is peculiarly within the police power province of the Legislature. The program undertaken thereunder lies primarily within the competence of experts in the medical and veterinary fields. Absent a clear showing of invalidity of the enabling statutes or an arbitrary, unreasonable administration of the program, the courts will not interfere. No such showing has been made in this case.

We reiterate, the situation and the evil involved in these cases is vastly different from the subject dealt with in the spreading decline cases.

We reverse the final decree of the Circuit Court and remand the consolidated cases with direction that further proceedings therein be in accordance with our opinion and judgment.

It is so ordered.

DREW and ADKINS, J.J., and SPECTOR, District Court Judge, concur

ROBERTS, J., dissents with Opinion

CALDWELL (Retired), J., dissents and agrees with ROBERTS, J.

ROBERTS, J. dissenting

Absent an emergency situation, held not to exist here, precipitate destruction of reactors, without first having shown reactor a carrier of the contagion, is too drastic. Many vaccinated reactors are not carriers. Also compare *Corneal* v. *State Plant Board*, 95 So.2d 1.

CALDWELL (Retired), J., agrees